

Small Business Administration

§ 121.402

credible evidence to the contrary is apparent.

(c) Size is initially considered by the individual with final financial assistance authority. This is not a formal size determination. A formal determination may be requested prior to a denial of eligibility based on size.

(d) An applicant may request a formal size determination when assistance has been denied for size ineligibility. Except for disaster loan eligibility, a request for a formal size determination must be made to the Government Contracting Area Director serving the area in which the headquarters of the applicant is located, regardless of the location of the parent company or affiliates. For disaster loan assistance, the request for a size determination must be made to the Area Director for the Disaster Area Office which denied the assistance.

(e) There are no time limitations for making a formal size determination for purposes of financial assistance. The official making the formal size determination must provide a copy of the determination to the applicant, to the requesting SBA official, and to other interested SBA program officials.

§ 121.304 What are the size requirements for refinancing an existing SBA loan?

(a) A concern that applies to refinance an existing SBA loan or guarantee will be considered small for the refinancing even though its size has increased since the date of the original financing to exceed its applicable size standard, provided that:

(1) The increase in size is due to natural growth (as distinguished from merger, acquisition or similar management action); and

(2) SBA determines that refinancing is necessary to protect the Government's financial interest.

(b) If a concern's size has increased other than by natural growth, the concern and its affiliates must be small at the time the application for refinancing is accepted for processing by SBA.

§ 121.305 What size eligibility requirements exist for obtaining financial assistance relating to particular procurements?

A concern qualified as small for a particular procurement, including an 8(a) subcontract, is small for financial assistance directly and primarily relating to the performance of the particular procurement.

SIZE ELIGIBILITY REQUIREMENTS FOR GOVERNMENT PROCUREMENT

§ 121.401 What procurement programs are subject to size determinations?

The rules set forth in §§121.401 through 121.413 apply to all Federal procurement programs for which status as a small business is required or advantageous, including the small business set-aside program, SBA's Certificate of Competency program, SBA's 8(a) Business Development program, SBA's HUBZone program, the Women Owned Small Business (WOSB) Federal Contract Program, SBA's Service-Disabled Veteran-Owned Small Business program, the Small Business Subcontracting program, and the Federal Small Disadvantaged Business (SDB) program.

[75 FR 62280, Oct. 7, 2010]

§ 121.402 What size standards are applicable to Federal Government Contracting programs?

(a) A concern must not exceed the size standard for the NAICS code specified in the solicitation. The contracting officer must specify the size standard in effect on the date the solicitation is issued. If SBA amends the size standard and it becomes effective before the date initial offers (including price) are due, the contracting officer may amend the solicitation and use the new size standard.

(b) The procuring agency contracting officer, or authorized representative, designates the proper NAICS code and corresponding size standard in a solicitation, selecting the single NAICS code which best describes the principal purpose of the product or service being acquired. Except for multiple award contracts as set forth in paragraph (c) of

this section, every solicitation, including a request for quotations, must contain only one NAICS code and only one corresponding size standard.

(1) Primary consideration is given to the industry descriptions in the U.S. NAICS Manual, the product or service description in the solicitation and any attachments to it, the relative value and importance of the components of the procurement making up the end item being procured, and the function of the goods or services being purchased.

(2) A procurement is generally classified according to the component which accounts for the greatest percentage of contract value. Acquisitions for supplies must be classified under the appropriate manufacturing or supply NAICS code, not under a Wholesale Trade or Retail Trade NAICS code. A concern that submits an offer or quote for a contract, order, or subcontract where the NAICS code assigned to the contract, order, or subcontract is one for supplies, and furnishes a product it did not itself manufacture or produce, is categorized as a nonmanufacturer and deemed small if it has 500 or fewer employees and meets the requirements of § 121.406(b).

(c) *Multiple Award Contracts* (see definition at § 125.1).

(1) For a Multiple Award Contract, the contracting officer must:

(i) Assign the solicitation a single NAICS code and corresponding size standard which best describes the principal purpose of the acquisition as set forth in paragraph (b) of this section, only if the NAICS code will also best describe the principal purpose of each order to be placed under the Multiple Award Contract; or

(ii) Divide the solicitation into discrete categories (such as Contract Line Item Numbers (CLINs), Special Item Numbers (SINs), Sectors, Functional Areas (FAs), or the equivalent), and assign each discrete category the single NAICS code and corresponding size standard that best describes the principal purpose of the goods or services to be acquired under that category (CLIN, SIN, Sector, FA or equivalent) as set forth in paragraph (b) of this section. A concern must meet the applicable size standard for each category

(CLIN, SIN, Sector, FA or equivalent) for which it seeks an award as a small business concern.

(2)(i) The contracting officer must assign a single NAICS code for each order issued against a Multiple Award Contract. The NAICS code assigned to an order must be a NAICS code included in the underlying Multiple Award Contract. When placing an order under a Multiple Award Contract with multiple NAICS codes, the contracting officer must assign the NAICS code and corresponding size standard that best describes the principal purpose of each order. In cases where an agency can issue an order against multiple SINs with different NAICS codes, the contracting officer must select the single NAICS code that best represents the acquisition. If the NAICS code corresponding to the principal purpose of the order is not contained in the underlying Multiple Award Contract, the contracting officer may not use the Multiple Award Contract to issue that order.

(ii) With respect to an order issued against a multiple award contract, an agency will receive small business credit for goaling only if the business concern awarded the order has represented its status as small for the underlying multiple award contract for the same NAICS code as that assigned to the order, provided recertification has not been required or occurred for the contract or order.

(d) The NAICS code assigned to a procurement and its corresponding size standard is final unless timely appealed to SBA's Office of Hearings and Appeals (OHA), or unless SBA assigns an NAICS code or size standard as provided in paragraph (e) of this section.

(e) When a NAICS code designation or size standard in a solicitation is unclear, incomplete, missing, or prohibited, SBA may clarify, complete, or supply a NAICS code designation or size standard, as appropriate, in connection with a formal size determination or size appeal.

(f) Any offeror or other interested party adversely affected by an NAICS

code designation or size standard designation may appeal the designations to OHA under part 134 of this chapter.

[61 FR 3286, Jan. 31, 1996, as amended at 65 FR 30863, May 15, 2000; 69 FR 29205, May 21, 2004; 75 FR 61604, Oct. 6, 2010; 76 FR 5683, Feb. 2, 2011; 76 FR 8252, Feb. 11, 2011; 78 FR 61130, Oct. 2, 2013; 81 FR 34259, May 31, 2016; 85 FR 66180, Oct. 16, 2020]

§ 121.403 Are SBA size determinations and NAICS code designations binding on parties?

Formal size determinations and NAICS code designations made by authorized SBA officials are binding upon the parties. Opinions otherwise provided by SBA officials to contracting officers or others are advisory in nature, and are not binding or appealable.

[61 FR 3286, Jan. 31, 1996, as amended at 65 FR 30863, May 15, 2000]

§ 121.404 When is the size status of a business concern determined?

(a) *Time of size*—(1) *Multiple award contracts*. With respect to Multiple Award Contracts, orders issued against a Multiple Award Contract, and Blanket Purchase Agreements issued against a Multiple Award Contract:

(i) *Single NAICS*. If a single NAICS code is assigned as set forth in § 121.402(c)(1)(i), SBA determines size status for the underlying Multiple Award Contract at the time of initial offer (or other formal response to a solicitation), which includes price, based upon the size standard set forth in the solicitation for the Multiple Award Contract, unless the concern was required to recertify under paragraph (g)(1), (2), or (3) of this section.

(A) *Unrestricted Multiple Award Contracts*. For an unrestricted Multiple Award Contract, if a business concern (including a joint venture) is small at the time of offer and contract-level recertification for the Multiple Award Contract, it is small for goaling purposes for each order issued against the contract, unless a contracting officer requests a size recertification for a specific order or Blanket Purchase Agreement. Except for orders and Blanket Purchase Agreements issued under any Federal Supply Schedule contract, if an order or a Blanket Purchase Agreement under an unrestricted Multiple

Award Contract is set-aside exclusively for small business (*i.e.*, small business set-aside, 8(a) small business, service-disabled veteran-owned small business, HUBZone small business, or women-owned small business), a concern must recertify its size status and qualify as a small business at the time it submits its initial offer, which includes price, for the particular order or Blanket Purchase Agreement. However, where the underlying Multiple Award Contract has been awarded to a pool of concerns for which small business status is required, if an order or a Blanket Purchase Agreement under that Multiple Award Contract is set-aside exclusively for concerns in the small business pool, concerns need not recertify their status as small business concerns (unless a contracting officer requests size certifications with respect to a specific order or Blanket Purchase Agreement).

(B) *Set-aside Multiple Award Contracts*. For a Multiple Award Contract that is set aside for small business (*i.e.*, small business set-aside, 8(a) small business, service-disabled veteran-owned small business, HUBZone small business, or women-owned small business), if a business concern (including a joint venture) is small at the time of offer and contract-level recertification for the Multiple Award Contract, it is small for each order or Blanket Purchase Agreement issued against the contract, unless a contracting officer requests a size recertification for a specific order or Blanket Purchase Agreement.

(ii) *Multiple NAICS*. If multiple NAICS codes are assigned as set forth in § 121.402(c)(1)(ii), SBA determines size status at the time a business concern submits its initial offer (or other formal response to a solicitation) which includes price for a Multiple Award Contract based upon the size standard set forth for each discrete category (*e.g.*, CLIN, SIN, Sector, FA or equivalent) for which the business concern submits an offer and represents that it qualifies as small for the Multiple Award Contract, unless the business concern was required to recertify under paragraph (g)(1), (2), or (3) of this section. If the business concern (including a joint venture) submits an offer for the entire Multiple